

**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-3316-2016(O&M)
Date of decision : 12.11.2018**

Sushila and another Appellants

versus

Surender Singh Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Adarsh Jain, Advocate for the appellants.

AMIT RAWAL, J. (ORAL)

CM No. 8793-C-2016

This is an application for condonation of delay of 7 days in filing the appeal.

For the reasons recorded in the application, the same is allowed.

Delay stands condoned.

CM No. 8795-C-2016

This is an application for impleading the LR's of appellant No.2-Chander Pal who is stated to have died on 24.08.2015. For the reasons recorded in the application the same is allowed subject to all just exceptions. Persons mentioned in para 3 of the application are impleaded as LR's of appellant No.2-Chander Pal. Registry to make necessary correction in the memo of parties.

RSA-3316-2016(O&M)

Appellant-defendants have not been successful in defending the

suit whereby sale deed dated 02.04.2007 executed by defendant No.1-

Sushila in favour of defendants No.2, her husband being her agent has been set aside.

As per the case set out in the plaint it was alleged that by attorney dated 05.10.2004 defendant No.1 was appointed as Special Power of Attorney but he did not turn out to be a bona fide agent and breached the trust by executing sale deed in question despite the fact that the authority given by attorney was revoked vide registered revocation deed dated 27.09.2006. A legal notice on 05.01.2007 in this regard was also served upon defendant No.1. Defendants contested the suit and set out one agreement to sell dated 14.06.2004 whereby plaintiff had agreed to sell the land in dispute for a total consideration of Rs. 60,000/- against the receipt of Rs. 35,000/-. Therefore, it was said to be a complete sale and suit was nothing but an act of greed. Even the possession of the suit property was also handed over.

Mr.Adarsh Jain, learned counsel appearing on behalf of the appellants submitted that in case the statement made in examination-in-chief goes unrebutted, the same is deemed to be admitted. Factum of possession with the defendants was not subjected to any cross examination. No doubt no witness of the agreement to sell has been examined but DW2-Shri Rajinder Singh-witness of the power of attorney has been examined. The legal notice dated 05.01.2007 has not seen the light of the day muchless the postal receipt. Notice to the agent is a mandatory requirement of law thus registration of revocation deed would be meaningless. In support of the aforementioned statement, ratio culled out in the judgment **Smt. Ram Asri alias Nikko v. Rakesh Chand and others**, 2008(4) RCR(civil) 335 has been relied, thus, there is an abdication.

I am afraid the aforementioned argument is not sustainable, for no witness of agreement to sell has been examined and power of attorney is also not of the same date but post 5.10.2004. As per the case set up in the written statement, the entire sale consideration had not passed. The remedy, if any, was to seek the specific performance. The contents of sale deed in dispute dated 2.4.2007 do not reveal passing of sale consideration. It was a sale between husband and wife. No evidence has been led to prove that the sale consideration reflected in the sale deed was passed on to the principal i.e. the real owner. All these factors weighed in the mind of the Courts.

There is no doubt about the ratio decidendi culled out in the judgment cited supra. In view of the reason assigned in preceding paragraph, I am of the view that such requirement of law would not overcome the law of equity where, in particular, the sale deed is between the husband and wife. It was a clear case of breach of trust and violation of authority by an agent of principal.

I do not subscribe to the argument of Mr. Jain as the same does not fall within the realm of illegality and perversity enabling this Court to form a different opinion than the one arrived at by the Courts below. No interference is called for.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

12.11.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No